

**Objection to the Issuance of WQC Regional General
Permit Notification, Evans Hill Road Project,
Switzerland County Commissioners
Cause No. 18-W-J-5001**

OFFICIAL SHORT CITATION NAME: When referring to 2019 OEA 13, cite this case as
Switzerland County Commissioners 2019 OEA 13.

Case name: Objection to the Issuance of WQC Regional General Permit Notification Evans Hill
Road Project, Switzerland County Commissioners

Cause No. 18-W-J-5001

Topics:

Section 401 Water Quality Certification Project
RGP WQC
Regional General Permit
mootness
great public interest
effective relief

Presiding Environmental Law Judge: Catherine Gibbs

Party representatives:

Counsel for IDEM:	Sierra Alberts
Petitioners Edward & Melissa Brush:	unrepresented
Permittee:	Wilmer Goering

Order issued: May 14, 2019

Index category: Water

Further case activity: none

STATE OF INDIANA)
)
 COUNTY OF MARION)

BEFORE THE INDIANA OFFICE OF
 ENVIRONMENTAL ADJUDICATION

IN THE MATTER OF:)
)
 OBJECTION TO ISSUANCE OF WQC REGIONAL)
 GENERAL PERMIT NOTIFICATION) CAUSE NO. 18-W-J-5001
 EVANS HILL ROAD PROJECT)
 SWITZERLAND COUNTY COMMISSIONERS)
 SWITZERLAND COUNTY, INDIANA)
 _____)
 Ed and Melissa Brush)
 Petitioners)
 Switzerland County Commissioners)
 Permittee/Respondent)
 Indiana Department of Environmental Management)
 Respondent)

**FINDINGS OF FACT, CONCLUSIONS
 OF LAW AND FINAL ORDER**

This matter came before the Office of Environmental Adjudication on the Indiana Department of Environmental Management’s Motion to Dismiss as Moot. The presiding Environmental Law Judge (the ELJ), being duly advised and having read the record and evidence, now enters the following findings of fact, conclusions of law and order.

Findings of Fact

1. On December 12, 2014, IDEM granted Section 401 Water Quality Certification Project: 2014 Reissuance of Regional General Permit No. 1 (RGP WQC) for Indiana.
2. On October 18, 2017, the Switzerland County Commissioners (the Commissioners) submitted the ATF certification application and mitigation plan to IDEM for 14578 Evans Hill Road (the Project).
3. On November 3, 2017, IDEM determined that the Project was out of scope and notified the Commissioners of this determination.
4. On November 22, 2017, the Commissioners submitted a revised Section 401 WQC Regional General Permit Notification to IDEM.
5. On November 22, 2017, IDEM project manager, James Turner, emailed the Highway Department to inform them that IDEM had verified that the Project met the conditions of the RGP WQC (the Email Notice). Mr. Turner assigned Project Number 2017-891-78-

JBT-X.

6. The Petitioners filed their petition for review on April 3, 2018 based on the Email Notice.
7. On April 17, 2019, counsel for Switzerland County Commissioners and the Switzerland County Highway Department withdrew the Section 401 WQC Regional General Permit Notification (the Notification) identified by IDEM as IDEM No. 2017-891-78-JBT-X.
8. On April 18, 2019, IDEM withdrew the notification and issued a letter confirming the withdrawal. In the letter, IDEM informs Switzerland County that if, at a later date, it wished to pursue the project, it would need to apply for the appropriate Section 401 Water Quality Certification.
9. IDEM filed its Motion to Dismiss as Moot on April 22, 2019. The Petitioners responded on May 6, 2019. IDEM filed its reply on May 10, 2019.

Conclusions of Law

1. The Indiana Department of Environmental Management (“IDEM”) is authorized to implement and enforce specified Indiana environmental laws, and rules promulgated relevant to those laws, per Ind. Code § 13-13, *et seq.* The Office of Environmental Adjudication (“OEA”) has jurisdiction over the decisions of the Commissioner of the IDEM and the parties to the controversy pursuant to IC 4-21.5-7-3.
2. Findings of fact that may be construed as conclusions of law and conclusions of law that may be construed as findings of fact are so deemed.
3. This office must apply a *de novo* standard of review to this proceeding when determining the facts at issue. *Indiana Dept. of Natural Resources v. United Refuse Co., Inc.*, 615 N.E.2d 100 (Ind. 1993). Findings of fact must be based exclusively on the evidence presented to the ELJ, and deference to the agency’s initial factual determination is not allowed. *Id.*; I.C. 4-21.5-3-27(d). “*De novo* review” means that, “all issues are to be determined anew, based solely upon the evidence adduced at that hearing and independent of any previous findings.” *Grisell v. Consol. City of Indianapolis*, 425 N.E.2d 247 (Ind.Ct.App. 1981).
4. “When a dispositive issue in a case has been resolved in such a way as to render it unnecessary to decide the question involved, the case will be dismissed.” *Travelers Indem. Co. v. P.R. Mallory & Co.*, 772 NE.2d 479, 484 (Ind. App. 2002). A case is deemed moot when there is no effective relief that can be rendered to the parties by the Court. *Indianapolis Educ. Ass’n v. Indianapolis Pub. Sch.*, 961 N.E.2d 546 (Ind. Ct. App. 2012); citing *A.D. v. State*, 736 N.E.2d 1274, 1276 (Ind. App. 2000). However, this Court “may decide an arguably moot case on its merits if it involves questions of great public interest.” *Jones v. Womack*, 852 N.E.2d 1035, 1040 (Ind. Ct. App. 2006) *transfer granted, opinion vacated sub nom. Jones v. Womack*, 869 N.E.2d 459 (Ind. 2007) citing *In Re Lawrence*,

579 N.E.2d 32 (Ind. 1991); *R.A. v. State*, 770 N.E.2d 376 (Ind. App. 1994). “Cases that fit within this exception typically are those containing issues that are likely to recur.” *Id.*

5. The Respondents’ motivation for withdrawing the Notification is not relevant to whether this matter is moot. The Notification in this cause has been withdrawn. There is no decision for OEA to review. Therefore, there is no effective relief that can be rendered to the Petitioner by the OEA.
6. Petitioners overestimate both OEA’s and IDEM’s authority to provide redress to Petitioners. The OEA’s authority is limited to review of IDEM decisions. IDEM’s authority is limited by statute. Any issues regarding roads or whether the County is misusing taxpayer money are simply beyond IDEM’s and OEA’s authority to address. Even if one assumes that these issues are of great public interest, the OEA does not the jurisdiction to address them.¹
7. Further, Switzerland County may not proceed with the project until such time as it submits a new notification. This notification may or may not present the same issues as the Notification being appealed here. As there is no guarantee that the issues will be the same, the exception for issues that are likely to recur does not apply. Petitioners retain their right to appeal any future decision by IDEM or the Commissioners regarding this project.

FINAL ORDER

IT IS THEREFORE ORDERED that IDEM’s Motion to Dismiss as Moot is **GRANTED** The Petition for Administrative Review filed by Petitioner is hereby dismissed.

You are hereby further notified that pursuant to provisions of Indiana Code § 4-21.5-7.5, the Office of Environmental Adjudication serves as the Ultimate Authority in the administrative review of decisions of the Commissioner of the Indiana Department of Environmental Management. This is a Final Order subject to Judicial Review consistent with applicable provisions of IC 4-21.5. Pursuant to IC 4-21.5-5-5, a Petition for Judicial Review of this Final Order is timely only if it is filed with a civil court of competent jurisdiction within thirty (30) days after the date this notice is served.

IT IS SO ORDERED this 14th day of May, 2019 in Indianapolis, IN.

Hon. Catherine Gibbs
Environmental Law Judge

¹ *Great Lakes Transfer Station SWFP*, 2006 OEA 24, 31.